



Serving the Iowa Legislature

IOWA LEGISLATIVE INTERIM CALENDAR AND BRIEFING

November 18, 2011

2011 Interim No. 7

In This Edition

Calendar	1
Agendas	2
Briefings	3
• Administrative Rules Review Committee (11/1/11)	
• Lake Macbride Study Committee (11/3/11)	

November 2011

Sun	Mon	Tue	Wed	Thu	Fri	Sat
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30			

December 2011

Sun	Mon	Tue	Wed	Thu	Fri	Sat
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

Monday, November 21, 2011

Government Oversight Committee

10:00 a.m., Room 116, Statehouse

Wednesday, November 30, 2011

Inmate Geriatric and Psychiatric Patients Study Committee

10:00 a.m., Department of Corrections Board Room, Jesse Parker Building

Tuesday, December 13, 2011

Administrative Rules Review Committee

9:30 a.m., Room 116, Statehouse

Sue Lerdal, LSA Fiscal Services Division, Retirement Reception

4:30-6:30 p.m., Noodle Zoo, 601 E. Locust St., Des Moines

Monday, December 19, 2011—Rescheduled from December 15, 2011

Mental Health and Disability Services Study Committee

10:00 a.m., Second Floor, Former Library, Ola Babcock Miller Building

Iowa Legislative Interim Calendar and Briefing is published by the Legal Services Division of the Legislative Services Agency (LSA). For additional information, contact: LSA at (515) 281-3566.

AGENDAS

INFORMATION REGARDING SCHEDULED MEETINGS

Government Oversight Committee

Senate Chairperson: Senator Thomas Courtney

House Chairperson: Representative Chris Hagenow

Location: Room 116, Statehouse

Date & Time: Monday, November 21, 2011, 10:00 a.m.

Contact Persons: Sue Lerdal, Fiscal Services, (515) 281-7794; Rick Nelson, Legal Services, (515) 242-5822; Doug Adkisson, Legal Services, (515) 281-3884.

Tentative Agenda: Receive background and other information from LSA concerning Iowa Code Chapter 8F, relating to government accountability and service contracts, and related presentations from the University of Iowa Nonprofit Center and United Way of Central Iowa. Receive reports regarding the Grants Enterprise Management System (GEMS), preneed funerals and perpetual care cemeteries, and E-911 services.

Internet Page: <http://www.legis.iowa.gov/Schedules/committee.aspx?CID=41>

Inmate Geriatric and Psychiatric Patients Study Committee

Co-Chairperson: Senator Tom Hancock

Co-Chairperson: Representative Gary Worthan

Location: Department of Corrections Board Room, Jesse Parker Building

Date & Time: Wednesday, November 30, 2011, 10:00 a.m.

Contact Persons: Joe McEniry, Legal Services, (515) 281-3189; Rachele Hjelmaas, Legal Services, (515) 281-8127.

Agenda: Review information from executive branch agencies developed pursuant to 2011 Iowa Acts, S.F. 510 and discuss next steps.

Internet Page: <http://www.legis.iowa.gov/Schedules/committee.aspx?CID=542>

Administrative Rules Review Committee

Chairperson: Senator Wally Horn

Vice Chairperson: Representative Dawn Pettengill

Location: Room 116, Statehouse

Date & Time: Tuesday, December 13, 2011, 9:30 a.m.

Contact Persons: Joe Royce, LSA Counsel, (515) 281-3084; Jack Ewing, LSA Counsel, (515) 281-6048.

Agenda: Published in the Iowa Administrative Bulletin:

<http://www.legis.state.ia.us/aspx/BulletinSupplement/bulletinListing.aspx>

Mental Health and Disability Services Study Committee

Co-Chairperson: Senator Jack Hatch

Co-Chairperson: Representative Renee Schulte

Location: Second Floor, Former Library, Ola Babcock Miller Building

Date & Time: Monday, December 19, 2011, 10:00 a.m.—Rescheduled from December 15, 2011.

Contact Persons: John Pollak, Legal Services, (515) 281-3818; Patty Funaro, Legal Services, (515) 281-3040; Rachele Hjelmaas, Legal Services, (515) 281-8127.

Agenda: Discuss next steps.

Internet Page: <http://www.legis.iowa.gov/Schedules/committee.aspx?GA=84&CID=541>

ADMINISTRATIVE RULES REVIEW COMMITTEE

November 1, 2011

Chairperson: Senator Wally Horn

Vice Chairperson: Representative Dawn Pettengill

EDUCATION DEPARTMENT, *Child Abuse Reports—Duties of School Authorities*, 10/5/11 IAB, ARC 9794B, NOTICE.

Background. This proposed rulemaking conforms the department's rules to 2011 Iowa Acts, H.F. 645, §95, which requires certain duties of the board of directors of a school district and the authorities in charge of an accredited non-public school when an employee is under investigation for an allegation of abuse under the department's rules and when a finding is made that an employee's conduct constitutes a crime. The duties include placing a school employee who is the subject of an investigation of an alleged incident of physical or sexual abuse on administrative leave once an investigator has determined that a written complaint is investigable and reporting the results of an investigation that finds that the school employee's conduct constitutes a crime to the Board of Educational Examiners.

Commentary. A department representative explained the purpose of the rulemaking, which implements a statutory change of Iowa Code §280.17 from the 2011 Legislative Session. Committee members expressed concern about the lack of standards as to what sort of evidence might be used against a school employee investigated under the rule and as to how much authority is granted to an investigator. Committee members also noted the possible stigma a school employee who is the subject of an investigation might face, even if the allegations later prove to be unfounded. The representative stated that a process and standards for investigations are set out in accordance with the statute. The possibility of setting a deadline for the conclusion of an investigation was raised, but the representative replied that it would be impractical to do so. Committee members asked if the administrative leave required by the rule would be with or without pay, and the representative stated that decision would be made by the school board. A motion was made to refer the rulemaking to the General Assembly for further consideration. The motion carried.

Action. General referral to the General Assembly.

HUMAN SERVICES DEPARTMENT, *Medicaid Eligibility—Elderly or Disabled Inmates*, 10/19/11 IAB, ARC 9804B, NOTICE.

Background. Currently, one of the factors that precludes Medicaid eligibility is residence in a public institution such as a jail or prison. 2011 Iowa Acts, S.F. 482, mandates suspension rather than cancellation of Medicaid eligibility when a person who is either elderly or disabled enters a public institution. This rulemaking sets the procedural requirements for that policy change. The expectation is that suspension of eligibility will allow for a streamlined process of reopening a person's Medicaid case when the person leaves the institution.

Commentary. A department representative, after laying out the purpose of the rulemaking, explained to the Committee that the department had within the past week been notified that limiting the suspension mandate only to the elderly would violate federal regulations in this area. Thus, the department will be removing the age limitation from the rulemaking. The representative acknowledged that the age limitation is now a requirement under state law, and stated that the department would be seeking a statutory change during the next legislative session. Committee members raised questions about the implications of a conflict between state law and federal regulations and requested that a letter from the Office of the Attorney General on the matter be distributed to the Committee.

Action. No action taken.

LABOR DIVISION, *Child Labor Limitations*, 10/05/11 IAB, ARC 9758B, NOTICE.

Background. Iowa Code §92.8(2) prohibits anyone under the age of 18 from employment as a "motor vehicle driver and helper". The term motor vehicle is broadly interpreted to include virtually any motorized means of transportation.

Commentary. This proposed rule creates an exception for 16- or 17-year-old employees of a golf course, allowing them to operate golf carts as part of their duties. Division representatives noted that youngsters playing golf on the course could drive a golf cart, and so it made little sense to deny that ability to employees.

Committee members suggested this same privilege should be extended to 16- and 17-year-old employees using all-terrain vehicles for farm work. Division representatives responded that all-terrain vehicles are significantly more powerful than golf carts and pose a greater danger to the operator. Committee members expressed concern about possible unintended consequences of this rule change, such as increased liability of the state for accidents caused by these young employees and possible conflicts with federal law. Division representatives responded that they would investigate these issues further.

Action. No action taken.

BRIEFINGS

INFORMATION REGARDING RECENT ACTIVITIES

(Administrative Rules Review Committee continued from Page 3)

PUBLIC EMPLOYMENT RELATIONS BOARD, Decertification Elections, 10/05/11 IAB, ARC 9795B, NOTICE.

Background. Longstanding Public Employment Relations Board (PERB) rules provide that in a decertification election, which determines whether a union will continue as the exclusive representative of a particular bargaining unit, a tie vote results in the union continuing as the bargaining unit's representative. Tie votes have in fact occurred, as recently as the current year, and in accord with the existing rule, the union's exclusive representation has continued. Under this proposed rule, if a tie vote occurs, the union would be decertified (i.e., not continue) as the representative of the bargaining unit.

Commentary. The board representative stated that the current rule is a misapprehension of the statutory scheme. The representative noted that a central precept of labor law is the principle that a majority of the bargaining unit must support unionization, and for that reason a tie vote reveals that a majority of the unit does not support unionization and the union should be decertified. The representative stated that the issue had first been identified years ago, but that a tie vote, occurring last year, provided the impetus for the rulemaking. Union representatives expressed their support for the current rule, stating that traditionally, a majority vote is needed to pass any action.

Committee members expressed concern on two points. First, some members noted that the statute refers only to majority votes, with no mention of tie votes. Other members were concerned that a policy of such long standing could be changed through administrative rule; these members felt the issue should be addressed through the legislative process. A member moved to refer this proposal to the General Assembly. Such a motion would refer the issue to the General Assembly for further study, but would not affect the adoption of the rule. After discussion, the members determined to postpone any further action until the rule is adopted in final form.

Action. No formal action; additional review when the notice is adopted in final form.

STATE VOTER REGISTRATION COMMISSION, Voter Notifications, 10/19/11 IAB, ARC 9810B, NOTICE.

Background. These proposed rules would require county election commissioners to send a notice to a voter when the voter's primary or general election polling place is permanently changed. Currently, voters across the state are treated inconsistently when polling place locations are permanently changed. Some receive notices mailed to their residences and other voters must rely on the election publications or contact the county commissioner's office to determine the location of the voter's polling place. The proposed rules require county commissioners to notify all active registered voters affected by a permanent primary or general election polling place change of their new polling place location. The rules provide commissioners with the discretion to send notices to each household with an active registered voter affected by the polling place change or to each active registered voter.

Commentary. A state commission representative explained that the purpose of this rulemaking is to clarify ambiguous language in the underlying statute. Setting a single standard, that of mailed notice, will achieve this objective. Committee members expressed concern about how much this new requirement might cost for counties that do not currently provide a mailed notice. Questions were raised as to whether there might be a more cost-effective means of achieving the commission's purpose. Committee members noted that polling places are more likely to undergo significant changes after a redistricting year, which may further increase the cost of this requirement. The representative explained that the commission works to minimize costs wherever possible, and stated that she would provide additional information to the Committee as to any additional costs resulting from this rulemaking.

Action. No action taken.

Next Meeting. The next regular Committee meeting will be held in Room 116, Statehouse Main Floor, on **Tuesday, December 13, 2011**, beginning at 9:30 a.m.

SPECIAL AGENDUM ITEM. During the December ARRC meeting, at 9:30 a.m., the Computer Support Division of the Legislative Services Agency will discuss a prototype of a new search engine to be added the legislative website. This addition will allow persons to search the Iowa Code, and the resulting search will also identify any administrative rules applicable to that Code section.

This search engine is still in the development stage and will not be immediately available to the public.

Secretary, ex officio: Stephanie Hoff, Administrative Code Editor, (515) 281-3355.

LSA Staff: Joe Royce, LSA Counsel, (515) 281-3084; Jack Ewing, LSA Counsel, (515) 281-6048.

Internet Page: <http://www.legis.iowa.gov/Schedules/committee.aspx?CID=53>

BRIEFINGS

INFORMATION REGARDING RECENT ACTIVITIES

LAKE MACBRIDE STUDY COMMITTEE

November 3, 2011

Co-Chairperson: Senator Dennis Black

Co-Chairperson: Representative Jeff Kaufmann

Background. The Lake Macbride Study Committee was created by the Legislative Council for the 2011 Legislative Interim and authorized to hold one meeting. The charge of the Committee is to review requirements and make recommendations pertaining to the use of motorboats on Lake Macbride.

Mr. Steve Waters, Department of Natural Resources (DNR), Southeast Iowa Supervisor, Fisheries Bureau. Mr. Waters discussed the history of motorboat use restrictions on artificial lakes in Iowa beginning in the 1930s when no motors were allowed on the state's artificial lakes. Eventually, all sizes of motors were allowed if operated at no-wake speed, with the exception of Big Creek Reservoir in Polk County and Lake Macbride in Johnson County where motors larger than 10 horsepower were banned during the summer months. In the mid-1990s, this horsepower restriction was removed for Big Creek Reservoir.

Mr. Waters stated that generally motors of any size that are operated at no-wake speed do not damage a lake. Nature is harder on shorelines than motorboats and since extensive shoreline work on Lake Macbride in the 1990s, 95 percent of that lake's shoreline has been protected. The biggest problem for the lake is sedimentation and phosphorus deposits.

Big Creek Reservoir (883 acres) and Lake Macbride (940 acres) are the biggest artificial lakes managed by the DNR. Lake Macbride receives about 37 percent less use by anglers than Big Creek Reservoir and would probably see an increase in use if the summer horsepower restriction is removed.

Ms. Gwen Prentice, DNR Parks Ranger. Ms. Prentice said that she has been a parks ranger at Lake Macbride State Park for 20 years and her main responsibility is to provide law enforcement on the lake. She said it would be easier to provide such law enforcement if the current practice is maintained with a no-wake speed restriction at all times and no horsepower restriction for part of the year. Ms. Prentice said that DNR enforces a 5 mile-per-hour limit on 38 other lakes with no horsepower restrictions and there are no enforcement problems or complaints. There have only been five accidents on no-wake restriction lakes in Iowa and none have been due to speed. She is not aware of anyone operating a big motor on Lake Macbride that has been altered to look like a smaller motor, although she has been told that it happens.

Senator Dvorsky asked whether boat speed is being enforced on the lake applied at no-wake speed limits or at a 5 mile-per-hour limit as Ms. Prentice mentioned. Mr. Chuck Gipp, DNR Deputy Director, stated that the DNR is currently enforcing a 5 mile-per-hour speed limit on lakes instead of a no-wake speed limit because it's easier to enforce with a radar gun and to prove in court. He recommended that the 5 mile-per-hour standard be clarified in the Code or by administrative rule instead of the current no-wake requirement.

Mr. Aron Arthur, DNR Conservation Officer, Law Enforcement Bureau. Mr. Arthur stated that he is assigned to Big Creek Reservoir in Polk County and the DNR is transitioning to enforcing a 5 mile-per-hour speed limit instead of the no-wake requirement, which is harder to prove. Mr. Arthur said he has been trained to judge speed without a radar gun by observing the attitude of the boat, its position, and observable whitewater coming off the boat. Ms. Diane Ford, DNR Legislative Liaison, indicated that the DNR expects to issue radar guns to its water patrol and other officers before the next boating season.

Mr. Chuck Gipp, DNR Deputy Director. Mr. Gipp said that the DNR is not advocating for removing the current horsepower restriction on Lake Macbride but is responding to the Committee request to provide information about the restriction. Mr. Gipp stated that water quality problems on Big Creek Reservoir are due to its watershed rather than activity on the lake. Mr. Gipp observed that the use of motorboats on Iowa's artificial lakes has evolved over time and asked that legislators tell their constituents to contact the DNR with complaints so that DNR can respond to them. Whatever the General Assembly decides, the DNR will manage the state's resources to represent the most users while maintaining safety. There is no accurate way to determine usage of Lake Macbride today since there are no entrance fees.

Mr. Steve Becicka, Oxford. Mr. Becicka, a fisher, spoke in favor of removing the horsepower restriction on Lake Macbride. He stated that as a law-abiding fisher, he prefers to fish on the lake because of the no-wake speed requirement, fishing is better there, and the lake is a safer place for him to take his family than the Coralville Reservoir where boat speeds can be high. He said that there are many opportunities for canoes on rivers and streams, because of the restriction he does not spend money in the area during the summer, and it is too expensive for him to buy a new smaller motor so he can use his fishing boat on Lake Macbride during the summer.

BRIEFINGS

INFORMATION REGARDING RECENT ACTIVITIES

(Lake Macbride Study Committee continued from Page 5)

Mr. Brian Gallagher, Cedar Rapids. Mr. Gallagher, a fisher, spoke in favor of removing the horsepower restriction on Lake Macbride. He stated that the lake is too big to use a trolling motor to traverse the lake, the horsepower restriction causes businesses in the area to lose money, and the best fishing in the lake is in June, when he cannot use his boat with its bigger motor. He said that there have been no accidents on Big Creek Reservoir since the horsepower restriction was removed and that Lake Macbride should be open to the public for full use the same as any other public 100-acre artificial lake in the state.

Mr. Bob Schlegel, Marion. Mr. Schlegel, a fisher, expressed hope that the General Assembly will put an end to the annual hot-button issue of the horsepower restrictions on Lake Macbride. He said that it is not fair to spend public money to make a private lake for a select few, and a no-wake requirement is the same regardless of motor size. Coralville Reservoir is not fishable because it is dirty and unstable, making Lake Macbride the only good fishing location in the area. Mr. Schlegel offered several alternatives that he opined would be fair to everyone including having a one-year trial period with no horsepower restrictions followed by a DNR report at the end of the year on how the trial worked and whether there were any complaints; extending the no-wake period through June to give fishers an additional month to fish the lake using their bigger motors; or applying the no-wake requirement to all boats Monday through Friday with the horsepower restriction on the weekend only.

Mr. Bob Burns, Chair, Lake Macbride Water Sports Safety Group. Mr. Burns said that lakes in other states have similar horsepower restrictions to those of Lake Macbride. He described several aspects of the lake that make it unique including use by the University of Iowa Sailing Club, a University of Iowa children's summer campus program, the University of Iowa School of the Wild, and the Environmental Education Nature Preserve. Mr. Burns also described his research indicating the differences in usage between Big Creek Reservoir and Lake Macbride and the cost to purchase a new or used 10 horsepower motor for use during the summer months.

Ms. Suzanne Bentler, Friends of Lake Macbride. Ms. Bentler spoke on behalf of low-impact users of the lake who canoe and kayak. She stated that other states have low horsepower restrictions and various use lakes and that there are not enough areas available in Iowa for low-impact activities. She said that Iowa needs a variety of recreational opportunities.

Mr. Tom Hart, University of Iowa Sailing Club. Mr. Hart stated that the use of combustion motors on water puts fossil fuels in the water and makes noise. The sailing club provides unique opportunities on Lake Macbride for beginners to learn to sail.

Committee Discussion and Recommendation. Senator Black noted that there are currently two proposed pieces of legislation before the General Assembly to remove the horsepower restriction on Lake Macbride. House File 462 passed the house on March 15, 2011, and is currently assigned to a subcommittee of the Senate Natural Resources and Environment Committee. Senate File 54 is also currently assigned to a subcommittee of the Senate Natural Resources and Environment Committee. After discussion, Senator Black asked for and received unanimous consent from the Committee to submit the minutes of the Lake Macbride Study Committee to the Speaker of the House of Representatives and the Senate Majority Leader and to the Chairpersons of the House Natural Resources Committee and the Senate Natural Resources and Environment Committee for their consideration.

LSA Contacts: Ann Ver Heul, Legal Services, (515) 281-3837; Andrew Ward, Legal Services, (515) 725-2251.

Internet Page: <http://www.legis.iowa.gov/Schedules/committee.aspx?GA=84&CID=544>